

AMENDED IN ASSEMBLY MAY 18, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 558**

**Introduced by Assembly Member Portantino**

February 16, 2011

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An act to ~~amend, repeal, and add~~ *repeal, add, and repeal* Section 17085 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 558, as amended, Portantino. Taxation: retirement plan distributions: penalties.

The Personal Income Tax Law, in modified conformity to federal income tax laws, imposes a ~~penalty~~ tax upon early distributions from qualified pension plans, as provided.

This bill would, for taxable years beginning on or after January 1, 2011, and before January 1, 2013, waive that ~~penalty~~ tax for ~~any early distribution, of up to the first \$25,000 per taxable year, on, distributed to~~ individuals who have ~~either exhausted or are ineligible for their~~ unemployment insurance benefits.

This bill would take effect immediately as a tax levy, ~~but its operative date would depend on its effective date.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 17085 of the Revenue and Taxation Code~~  
2     ~~is amended to read:~~

~~17085. Section 72 of the Internal Revenue Code, relating to annuities; certain proceeds of endowment and life insurance contracts, is modified as follows:~~

~~(a) The amendments and transitional rules made by Public Law 99-514 shall be applicable to this part for the same transactions and the same years as they are applicable for federal purposes, except that the repeal of Section 72(d) of the Internal Revenue Code, relating to repeal of special rule for employees' annuities, shall apply only to the following:~~

~~(1) Any individual whose annuity starting date is after December 31, 1986.~~

~~(2) At the election of the taxpayer, any individual whose annuity starting date is after July 1, 1986, and before January 1, 1987.~~

~~(b) The amount of a distribution from an individual retirement account or annuity or employee trust or employee annuity that is includable in gross income for federal purposes shall be reduced for purposes of this part by the lesser of either of the following:~~

~~(1) An amount equal to the amount includable in federal gross income for the taxable year.~~

~~(2) An amount equal to the basis in the account or annuity allowed by Section 17507 (relating to individual retirement accounts and simplified employee pensions), the increased basis allowed by Sections 17504 and 17506 (relating to plans of self-employed individuals), the increased basis allowed by Section 17501, or the increased basis allowed by Section 17551 that is remaining after adjustment for reductions in gross income under this provision in prior taxable years.~~

~~(c) (1) Except as provided in paragraphs (2) and (3), the amount of the penalty imposed under this part shall be computed in accordance with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code, as applicable for federal income tax purposes for the same taxable year, using a rate of 2 ½ percent, in lieu of the rate provided in those sections.~~

~~(2) In the case where Section 72(t)(6) of the Internal Revenue Code, relating to special rules for simple retirement accounts, as applicable for federal income tax purposes for the same taxable year, applies, the rate in paragraph (1) shall be 6 percent in lieu of the 2 ½ percent rate specified therein.~~

~~(3) For taxable years beginning on or after January 1, 2011, and before January 1, 2013, the penalty imposed by this subdivision~~

1 shall not apply to any distribution, not to exceed twenty-five  
2 thousand dollars (\$25,000) per taxable year, from a qualified  
3 pension, profit-sharing, or stock bonus plan (within the meaning  
4 of Section 401 of the Internal Revenue Code) of an individual who  
5 has either exhausted his or her unemployment benefits or who is  
6 ineligible for unemployment benefits.

7 (d) ~~Section 72(f)(2) of the Internal Revenue Code shall be~~  
8 ~~applicable without applying the exceptions which immediately~~  
9 ~~follow that paragraph.~~

10 (e) ~~The amendments made by Section 844 of the Pension~~  
11 ~~Protection Act of 2006 (Public Law 109-280) to Section 72(e) of~~  
12 ~~the Internal Revenue Code, shall not apply.~~

13 (f) ~~This section shall remain in effect only until December 1,~~  
14 ~~2013, and as of that date is repealed.~~

15 *SECTION 1. Section 17085 of the Revenue and Taxation Code*  
16 *is repealed.*

17 17085. ~~Section 72 of the Internal Revenue Code, relating to~~  
18 ~~annuities; certain proceeds of endowment and life insurance~~  
19 ~~contracts, is modified as follows:~~

20 (a) ~~The amendments and transitional rules made by Public Law~~  
21 ~~99-514 shall be applicable to this part for the same transactions~~  
22 ~~and the same years as they are applicable for federal purposes,~~  
23 ~~except that the repeal of Section 72(d) of the Internal Revenue~~  
24 ~~Code, relating to repeal of special rule for employees' annuities,~~  
25 ~~shall apply only to the following:~~

26 (1) ~~Any individual whose annuity starting date is after December~~  
27 ~~31, 1986.~~

28 (2) ~~At the election of the taxpayer, any individual whose annuity~~  
29 ~~starting date is after July 1, 1986, and before January 1, 1987.~~

30 (b) ~~The amount of a distribution from an individual retirement~~  
31 ~~account or annuity or employee trust or employee annuity that is~~  
32 ~~includable in gross income for federal purposes shall be reduced~~  
33 ~~for purposes of this part by the lesser of either of the following:~~

34 (1) ~~An amount equal to the amount includable in federal gross~~  
35 ~~income for the taxable year.~~

36 (2) ~~An amount equal to the basis in the account or annuity~~  
37 ~~allowed by Section 17507 (relating to individual retirement~~  
38 ~~accounts and simplified employee pensions), the increased basis~~  
39 ~~allowed by Sections 17504 and 17506 (relating to plans of~~  
40 ~~self-employed individuals), the increased basis allowed by Section~~

1 17501, or the increased basis allowed by Section 17551 that is  
2 remaining after adjustment for reductions in gross income under  
3 this provision in prior taxable years.

4 (e) (1) Except as provided in paragraph (2), the amount of the  
5 penalty imposed under this part shall be computed in accordance  
6 with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code,  
7 as applicable for federal income tax purposes for the same taxable  
8 year, using a rate of 2  $\frac{1}{2}$  percent, in lieu of the rate provided in  
9 those sections.

10 (2) In the case where Section 72(t)(6) of the Internal Revenue  
11 Code, relating to special rules for simple retirement accounts, as  
12 applicable for federal income tax purposes for the same taxable  
13 year, applies, the rate in paragraph (1) shall be 6 percent in lieu of  
14 the 2  $\frac{1}{2}$  percent rate specified therein.

15 (d) Section 72(f)(2) of the Internal Revenue Code shall be  
16 applicable without applying the exceptions which immediately  
17 follow that paragraph.

18 (e) The amendments made by Section 844 of the Pension  
19 Protection Act of 2006 (Public Law 109-280) to Section 72(e) of  
20 the Internal Revenue Code, shall not apply.

21 SEC. 2. Section 17085 is added to the Revenue and Taxation  
22 Code, to read:

23 17085. Section 72 of the Internal Revenue Code, relating to  
24 annuities; certain proceeds of endowment and life insurance  
25 contracts, is modified as follows:

26 (a) The amendments and transitional rules made by Public Law  
27 99-514 shall be applicable to this part for the same transactions  
28 and the same years as they are applicable for federal purposes,  
29 except that the repeal of Section 72(d) of the Internal Revenue  
30 Code, relating to repeal of special rule for employees' annuities,  
31 shall apply only to the following:

32 (1) Any individual whose annuity starting date is after December  
33 31, 1986.

34 (2) At the election of the taxpayer, any individual whose annuity  
35 starting date is after July 1, 1986, and before January 1, 1987.

36 (b) The amount of a distribution from an individual retirement  
37 account or annuity or employee trust or employee annuity that is  
38 includable in gross income for federal purposes shall be reduced  
39 for purposes of this part by the lesser of either of the following:

1     (1) An amount equal to the amount includable in federal gross  
2 income for the taxable year.

3     (2) An amount equal to the basis in the account or annuity  
4 allowed by Section 17507 (relating to individual retirement  
5 accounts and simplified employee pensions), the increased basis  
6 allowed by Sections 17504 and 17506 (relating to plans of  
7 self-employed individuals), the increased basis allowed by Section  
8 17501, or the increased basis allowed by Section 17551 that is  
9 remaining after adjustment for reductions in gross income under  
10 this provision in prior taxable years.

11     (c) (1) Except as provided in paragraphs (2) and (3), the  
12 amount of the penalty imposed under this part shall be computed  
13 in accordance with Sections 72(m), (q), (t), and (v) of the Internal  
14 Revenue Code, as applicable for federal income tax purposes for  
15 the same taxable year, using a rate of 2½ percent, in lieu of the  
16 rate provided in those sections.

17     (2) In the case where Section 72(t)(6) of the Internal Revenue  
18 Code, relating to special rules for simple retirement accounts, as  
19 applicable for federal income tax purposes for the same taxable  
20 year, applies, the rate in paragraph (1) shall be 6 percent in lieu  
21 of the 2½ percent rate specified therein.

22     (3) For taxable years beginning on or after January 1, 2011,  
23 and before January 1, 2013, the penalty imposed by this subdivision  
24 shall not apply to the first twenty-five thousand dollars (\$25,000)  
25 distributed to an individual who has exhausted his or her  
26 unemployment benefits.

27     (d) Section 72(f)(2) of the Internal Revenue Code shall be  
28 applicable without applying the exceptions which immediately  
29 follow that paragraph.

30     (e) The amendments made by Section 844 of the Pension  
31 Protection Act of 2006 (Public Law 109-280) to Section 72(e) of  
32 the Internal Revenue Code, shall not apply.

33     (f) This section shall remain in effect only until December 1,  
34 2013, and as of that date is repealed.

35     ~~SEC. 2.~~

36     SEC. 3. Section 17085 is added to the Revenue and Taxation  
37 Code, to read:

38     17085. Section 72 of the Internal Revenue Code, relating to  
39 annuities; certain proceeds of endowment and life insurance  
40 contracts, is modified as follows:

(a) The amendments and transitional rules made by Public Law 99-514 shall be applicable to this part for the same transactions and the same years as they are applicable for federal purposes, except that the repeal of Section 72(d) of the Internal Revenue Code, relating to repeal of special rule for employees' annuities, shall apply only to the following:

(1) Any individual whose annuity starting date is after December 31, 1986.

(2) At the election of the taxpayer, any individual whose annuity starting date is after July 1, 1986, and before January 1, 1987.

(b) The amount of a distribution from an individual retirement account or annuity or employee trust or employee annuity that is includable in gross income for federal purposes shall be reduced for purposes of this part by the lesser of either of the following:

(1) An amount equal to the amount includable in federal gross income for the taxable year.

(2) An amount equal to the basis in the account or annuity allowed by Section 17507 (relating to individual retirement accounts and simplified employee pensions), the increased basis allowed by Sections 17504 and 17506 (relating to plans of self-employed individuals), the increased basis allowed by Section 17501, or the increased basis allowed by Section 17551 that is remaining after adjustment for reductions in gross income under this provision in prior taxable years.

(c) (1) Except as provided in paragraph (2), the amount of the penalty imposed under this part shall be computed in accordance with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code, as applicable for federal income tax purposes for the same taxable year, using a rate of 2½ percent, in lieu of the rate provided in those sections.

(2) In the case where Section 72(t)(6) of the Internal Revenue Code, relating to special rules for simple retirement accounts, as applicable for federal income tax purposes for the same taxable year, applies, the rate in paragraph (1) shall be 6 percent in lieu of the 2½ percent rate specified therein.

(d) Section 72(f)(2) of the Internal Revenue Code shall be applicable without applying the exceptions which immediately follow that paragraph.

1 (e) The amendments made by Section 844 of the Pension  
2 Protection Act of 2006 (Public Law 109-280) to Section 72(e) of  
3 the Internal Revenue Code, shall not apply.

4 (f) This section shall ~~become operative on~~ *be operative for*  
5 *taxable years beginning on or after* January 1, 2013.

6 ~~SEC. 3.~~

7 *SEC. 4.* This act provides for a tax levy within the meaning of  
8 Article IV of the Constitution and shall go into immediate effect.